

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEANDRE MAURICE MANLEY,

Defendant-Appellant.

UNPUBLISHED

January 18, 2011

No. 295044

Wayne Circuit Court

LC No. 09-009249-01

Before: MARKEY, P.J., and ZAHRA and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for assault with intent to murder, MCL 750.83, armed robbery, MCL 750.529, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Because the prosecutor presented sufficient evidence on the essential elements of each crime and because from such evidence a rational fact finder could conclude guilt beyond a reasonable doubt, we affirm defendant's convictions.

On appeal, defendant argues that the prosecution failed to present legally sufficient evidence to support his convictions. This Court reviews de novo a challenge to the sufficiency of the evidence in a bench trial. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). The evidence is viewed in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proven beyond a reasonable doubt. *Id.*

Defendant contends there was insufficient evidence to convict him of assault with intent to commit murder. The elements of assault with intent to commit murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). An assault is either an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery. *People v Nickens*, 470 Mich 622, 628; 685 NW2d 657 (2004). Moreover, a battery is an intentional, unconsented, and harmful or offensive touching of the person. *Id.* Assault with intent to commit murder requires specific intent to kill. *People v Brown*, 267 Mich App 141, 148; 703 NW2d 230 (2005). A person's intent to kill may be inferred from any facts in evidence, including the use of a deadly weapon at close range. *People v Ray*, 56 Mich App 610, 615; 224 NW2d 735 (1974).

Here, Elijah McKinney testified that defendant placed a gun to his head and pulled the trigger, but that the gun malfunctioned and no bullet discharged. This testimony was sufficient for a reasonable fact finder to find all the elements of assault with intent to commit murder. That is, the evidence shows that defendant assaulted McKinney, with the intent to kill which, if successful, would have made the killing murder.

Defendant next contends there was insufficient evidence to convict him of armed robbery. “The essential elements of an armed robbery are (1) an assault, and (2) a felonious taking of property from the victim’s person or presence, while (3) the defendant is armed with a weapon described in the statute.” *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993). In this case, McKinney testified that defendant placed a gun to his head and demanded that McKinney turn over all his belongings. McKinney stated that defendant hit him in the head with the handgun and took his belongings from his pockets. According to McKinney, defendant took \$400 and two cell phones from his pockets. This evidence is sufficient for the trial court, as the trier of fact, to find all the elements of armed robbery.

Defendant was also convicted of felon in possession pursuant to MCL 750.224f, which provides, in relevant part: “[a] person convicted of a specified felony shall not possess . . . a firearm in this state” MCL 750.224f(2). Defendant argues that there was insufficient evidence to convict him of felon in possession. At trial, the parties stipulated to defendant’s prior felony convictions. In addition, McKinney testified that defendant possessed a handgun, which he used to strike McKinney on the head. McKinney also testified that defendant used a gun when attempting to shoot him. Again, this evidence is sufficient for the trial court, as the trier of fact, to find all the elements of felon in possession.

Defendant also contends there was insufficient evidence to convict him of felony-firearm. The elements of felony-firearm are: (1) the possession of a firearm (2) during the commission of, or the attempt to commit, a felony. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). In the present case, there is testimony from McKinney that defendant possessed a handgun. McKinney further stated that defendant possessed this handgun when he took McKinney’s belongings and attempted to shoot him. This evidence is sufficient for a rational trier of fact to find that defendant possessed a gun during the commission of a felony, i.e. assault with intent to murder and armed robbery.

Defendant next argues that the many inconsistencies in McKinney’s testimony brought his credibility into question. McKinney testified that he told the patrons at the motorcycle club and the investigating police officers that defendant was the shooter. However, he also stated, at trial, that the shooter was in fact defendant’s partner whose name he did not know. Still, Alicia Randall testified that McKinney told her that “Dre” shot him. According to Officer Willie King, McKinney also identified defendant as the shooter. The trial court found McKinney’s testimony “interesting.” The trial court noted that each time McKinney told his story he would lessen defendant’s role in the shooting. That is, McKinney first stated that defendant shot him but later stated that defendant’s friend shot him.

The trial court found that, despite McKinney’s inconsistent testimony regarding who fired the shot, McKinney’s trial testimony was still sufficient to find defendant guilty on the four counts. The trial court found that the critical testimony was that defendant put a gun to

McKinney's head and pulled the trigger (albeit no bullet discharged) and that this evidence was credible. The trial court also found that, despite Delanea Porter's testimony, defendant was the one who committed the crime. When there is conflicting testimony, the question of witness credibility ordinarily should be left for the trier of fact. *People v Farrow*, 461 Mich 202, 209; 600 NW2d 634 (1999) (the trial court's "resolution of a factual issue is entitled to deference," particularly where it "involves the credibility of the witnesses whose testimony is in conflict"). We will not interfere with the trier of fact's role in determining the credibility of the witnesses or the weight of the evidence. *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005). When viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find beyond a reasonable doubt that defendant committed the offenses of assault with intent to murder, armed robbery, felon in possession, and felony-firearm.

Affirmed.

/s/ Jane E. Markey
/s/ Brian K. Zahra
/s/ Pat M. Donofrio